

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

§ 1439.107 Calculation of assistance.

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn, as determined (\$1.92 bushel or \$0.0342857 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture, and multiplying the result by:

(2) The 5-year national average market price for corn, as determined (\$1.92 bushel or \$0.0342857 per pound); by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the

weight class and type of livestock, as determined by CCC), by

(4) The applicable number of days in the LAP payment period; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) or (c) of this section and from the final payment amount shall be subtracted the sum of the amounts received by the producer under the Livestock Compensation Program, as published in the FEDERAL REGISTER on October 10, 2002 (67 FR 63070), and the 2002 Cattle Feed Program, as published on September 3, 2002 (67 FR 56260). The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to subtracting the amounts received by the producer under the Livestock Compensation Program, as published in the FEDERAL REGISTER on October 10, 2002 (67 FR 63070), the 2002 Cattle Feed Program, as published on September 3, 2002 (67 FR 56260), and the Livestock Compensation Program II, as published on May 5, 2003 (68 FR 23688).

(e) The final payment calculated in paragraph (d) of this section shall be multiplied by the national factor if required under § 1439.108.

(f) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(g) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

§ 1439.108 Availability of funds.

In the event that the total amount of claims submitted under this subpart exceed \$250 million, each payment shall

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be reduced by a uniform national percentage. Such payment reductions shall be made after the imposition of applicable payment limitation provisions.

§ 1439.109 Financial considerations.

The provisions of §§ 1439.10 and 1439.11 apply to 2002 LAP.

§ 1439.110 Appeals.

Determinations made under this subpart are subject to reconsideration or appeal in accordance with parts 780 and 11 of this title.

§ 1439.111 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of

the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

§ 1439.112 Miscellaneous.

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, CCC may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in subpart A of this part including, but not limited to, provisions concerning misrepresentations, payment limitations, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition, other parts of this chapter and of chapter VII of this Title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.